Remarks

The Office Action has been reviewed with care and certain amendments made which are believed to place this application in condition for allowance. Applicant appreciates the attention of the Examiner to this patent application.

Claim rejections under 35 USC 112

Claims 1-6, 8, 9, 11-19, 55-63, 65, 66, 68-71, 72-77, 79, 80, and 82-89 stand rejected under 35 USC 112, first paragraph as unsupported by the specification, since the patent only teaches the use of gibberellin. As such, independent claims 1, 56, 71 and 72 have been amended to include gibberellin in the growth regulating compound and claims 7, 64 and 78 have been cancelled.

Next claims 71-89 stand rejected under 35 USC 112, first paragraph as not enabled. The basis of this rejection is that the *Mainland et al.* reference is considered to disclose similar methods without the same results; however, *Mainland* clearly utilized a different method of application. In the "Materials and Methods" section, first paragraph, the experiment in reference teaches that the application was made when the cranberry blossoms were "in full bloom." In contrast the present application is enabling to one of skill in the art to reach the at least 80% fruit sets since it teaches the application of the growth regulating composition during the mid-bloom period as opposed to the "full bloom" method disclosed in *Mainland*. *See*, pg. 4, ll. 10-14 of current application.

Finally, claims 71-89 stand rejected under 35 USC 112, second paragraph as being indefinite since other factors (such as weather and soil conditions) will impact the amount of growth regulator needed to achieve the at least 80% fruit set. The present application incorporates by reference all commercial application techniques known in the agricultural field. *See,* pg. 5, ll 3-4 of current application. A person of skill in the art would understand that the amount of growth-regulator, like any substance to be applied to crops, needs to vary based on a variety of factors. This sort of variation is of course normal to a person of skill in the art and the specification. "The requirement that the claims 'particularly point [] out and distinctly claim' the

invention is met when a person experienced in the field of the invention would understand the scope of the subject matter that is patented when the claim is read in conjunction with the rest of the specification." *S3, Inc. v. nVIDIA Corp.*, 259 F.3d 1364, 1367 (Fed. Cir. 2001). Since application of any substance to crops would be modified by the same types of variables, a person of skill in the art would read the present specification and understand that normal commercial techniques would apply to the present invention and therefore the claims are not indefinite. This definiteness is underscored by the Examiner's own arguments in relation to 35 USC 103 that, according to the Examiner's understanding, it would be obvious to one of skill in the art to modify the "concentration of GA" taught in Mainland to achieve the results of the present invention.

Claim rejections under 35 USC 103

The Office Action rejected claims 1-19 and 55-89 as being obvious in view of *Mainland.* The rejection contends that it would be obvious to one of ordinary skill in the art to further experiment in view of *Mainland* in order to find the specific claimed ranges.

Submitted with the Office Action Response dated August 11, 2003 were declarations from Jonathan D. Smith, Ph.D. and Donald Wandler which support the nonobviousness and patentability of all rejected claims.

Specifically, the Smith declaration states that others have failed to develop a method for commercially growing miniature cranberries which provides that most of the cranberries have a mature mass of less than about 0.6 grams, that the claimed invention was made despite skepticism of experts in the field, that the claimed invention was an unexpected result of his work, that the claimed invention addressed the previously unidentified problem of the size of cranberries and achieved commercial success due entirely to the miniature cranberries' characteristics. The Wandler declaration further supports the great commercial success of the claimed cranberries.

Furthermore, the Smith declarations states that the claimed method of increasing fruit set on cranberry plants such that the plants have a fruit set of at least about 80% solves the long-

standing, but heretofore unsolved need for a method of increasing fruit sets in cranberry plants, that the claimed method was invented despite the failure of others, that the claimed method was invented despite the apparent skepticism of experts in the field, that the claimed method was an unexpected result of his work in cranberry cultivation, and that the claimed method results in cranberries which have achieved great commercial success due to the cranberries' characteristics. The Wandler declaration further supports the commercial success of the cranberries.

In view of these declarations and the amendments made herein it is clear that applicant's claims 1-19 and 55-89 are patentably distinguishable over *Mainland*. The fact that others have failed to develop a method as claimed demonstrates that Applicant's invention is not obvious. The fact that the invention was made despite skepticism of experts in the field supports the nonobviousness of Applicant's invention. The fact that the claimed invention was an unexpected result of Dr. Smith's work supports the nonobviousness of his invention. The fact that others had not previously identified the problem concerning the size of cranberries demonstrates that Applicant's invention is not obvious. Finally, the fact that the Applicant's invention has been embraced by the cranberry-consuming community immediately upon its introduction to the market and at significantly higher prices than conventional cranberries supports its nonobviousness.

In addition, according to the MPEP, 2141.02, when making an obviousness rejection the entire reference must be considered; therefore the differences between the prior art and the claimed invention, including disclosure that teaches away from the claims, must be utilized by the Examiner before the art can be utilized to support a 103 rejection. This is exactly the current situation. The *Mainland* reference is rife with inferences that the end goal of any use of growth regulating compounds is to be get more berries of acceptable size (large size):

> "A fruit set of 30% in commercial bogs is generally considered normal. The question then arises as to whether the vigor of the cranberry plant can be increased to the extent that it is capable of fully sizing a GA-induced crop. The fact that GA

treated fruit sized normally in 1966 when there were very few blossoms supports the carbohydrate reserve hypothesis." pg. 299.

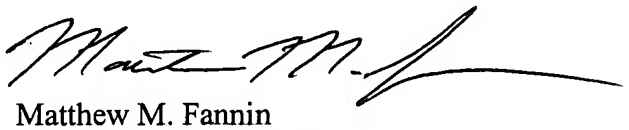
"The most pronounced effect of GA upon flowering and growth characteristics of the cranberry seriously negates whatever commercial benefit that might be derived from the effect of GA on fruit set." pg. 299.

"It would be interesting to determine whether the GA effects on fruit sets can be maintained at lower concentrations at which point the GA growth effects might not be as severe." pg. 300.

All of these passages show a clear teaching away from experimentation to achieve the present invention since clearly the goal was to achieve more "normal" sized berries. Therefore, the *Mainland* reference teaches away and cannot be utilized as art for a 35 USC 103 rejection.

Applicant believes that all rejections have been traversed by amendment and/or argument and all claims are in proper form for allowance. Early favorable action is earnestly solicited. The Examiner is invited to call the undersigned attorney if that would be helpful in facilitating resolution of any issues which might remain.

Respectfully submitted,



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Dated: May 30, 2006
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Atty. Docket No. RBC-101US